



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-40-10 et seq.
Regulation Title:	Regulations Governing the Practice of Respiratory Care Practitioners
Action Title:	Periodic review – continuing education
Date:	February 11, 2003

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The board is amending its regulations for the licensure of respiratory care practitioners in order to address concerns about the continued competency of practitioners who are renewing their licenses. Regulations establish requirements for 20 hours of continuing education per biennium from an approved sponsor or organization, provide for exemptions or extensions of time for compliance, maintenance and provision of documentation upon request, and evidence of continuing education for reinstatement or reactivation of a license. Other amendments are adopted for greater clarity for the regulated entities or for adaptability to computerized testing.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

The Advisory Board on Respiratory Care recommended and the Board adopted an amendment to 18 VAC 85-40-60 A 4 to allow a licensee who has not maintained active practice (as defined in section 10) options for meeting that requirement in order to renew a license.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On February 6, 2003, the Board of Medicine adopted final amendments to 18 VAC 85-40-10 et seq., Regulations Governing the Practice of Respiratory Care Practitioners pursuant to recommendations of a periodic review of regulations and establishment of continuing education requirements.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and issue an inactive license.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

1. *To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*

2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance*

with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

- 12. To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The Board of Medicine has a specific statutory mandate to promulgate regulations to ensure practitioner competence with requirements such as continuing education.

§ 54.1-2912.1. Continued competency requirements.

- A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.*
- B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.*
- C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.*

In addition, the Board is also authorized by § 54.1-103 to specify additional training for licensees seeking renewal of licenses.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

- A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.*

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Through a periodic review of regulations, the Advisory Board on Respiratory Care identified several rules that needed to be clarified or updated. It particularly noted the need for a specific requirement for continuing education as an indication that the practitioner has updated his knowledge base and ability to practice. While regulations currently require 160 hours of practice in a biennium to renew an active license, comments during regulatory review strongly favored some requirement for continuing education to ensure that respiratory care practitioners have maintained their skills and competencies in order to protect the public health, safety and welfare. As with other

fields in medicine, respiratory care is continuously changing with new technology and treatments; continuing education is essential if the Board is going to ensure minimal competency of its licensees. Documentation of continuing competency activities will ensure that the person resuming active practice or licensure in Virginia has maintained current knowledge and skills to appropriately manage and treat patients.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

Amended regulations will require 20 hours of continuing education each biennium as approved and documented by a sponsor or provider recognized by the national professional body, the American Association for Respiratory Care. Licensees are granted an exemption from the requirement in the first renewal following initial licensure and are also allowed to petition the Board for an extension of time if unable to fulfill their hours. Documentation from the AARC must be retained for four years following renewal and provided to the Board within 30 days in the event the licensee is audited. In addition, the amendments establish a continuing education requirement for reactivation or reinstatement of an inactive license.

Other amendments are “housekeeping” to clarify certain sections or to allow the Board flexibility in approval of examination or the receipt of examination results. A change in section 60 from the proposed regulation will give licensees who have not maintained 160 hours of active practice in the past biennium the opportunity to demonstrate ability to engage in practice by other means, such as enrollment in a respiratory care course and practice as a trainee or additional hours of continuing education.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Advantages or disadvantages to the public:

There are definite advantages of the amended regulations to the public, which will have greater assurance that the licensees for the Board are engaged in activities to maintain and improve their knowledge and skills in providing care to their patients. The public is also better served by a continuing competency requirement for licensees who have allowed their license to lapse or have been inactive.

Advantages to the licensees:

The continuing competency requirements are intended to provide some assurance to the public that licensees of the Board are maintaining current knowledge and skills, while providing the some flexibility to licensees. The Board believes that the majority of respiratory care practitioners already obtain sufficient hours of continuing competency activities or courses in a biennium. Licensees who work for organizations are often required to take in-service training or continuing education for employment. The resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia.

The amendment to section 60 to allow a licensee without 160 hours of continuing education to use other means to demonstrate ability to practice may greatly benefit a small number of respiratory care practitioners. With the current regulation, someone who has not engaged in active practice would have no choice but to let the license lapse and try to reinstate.

Disadvantages to the licensees:

For a small minority of practitioners who do not currently engage in any continuing learning in their profession, these requirements will represent an additional burden. However, it was determined by enactment of the statute and by the Board's concurrence that those practitioners and their patients would greatly benefit from continuing learning requirements, and that the public is better protected if there is some assurance of that effort.

Advantages or disadvantages to governmental agencies:

Government agencies that employ respiratory care practitioners may incur some additional costs if they elect to hire individuals to present workshops or seminars to their staff or to pay for continuing education. The Board will incur additional costs to monitor compliance of licensees, and to hold additional disciplinary hearings for individuals who do not comply with the requirement.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Proposed regulations were published in the Virginia Register of Regulations on October 7, 2002. Public comment was requested for a 60-day period ending December 6, 2002; during that period, electronic comments were received from four individuals or organizations as follows:

Four individuals, including the President and the President-Elect for the Virginia Society for Respiratory Care, strongly supported the proposed requirement for 20 hours of continuing education each biennium.

A Public Hearing before the Board was held on October 10, 2002 at which time there were no comments on the proposed regulations for respiratory care practitioners.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 85-40-10. Definitions.

A definition for the acronym "AARC" is added as the term is used in new requirements for continuing education.

18 VAC 85-40-35. Fees.

A new section is added to include the fee provisions under General Provisions in Part I. The section replaces section 80, which is being repealed. There are no changes to the current fees.

18 VAC 85-40-40. Application requirements.

The Board adopted an amendment to the requirement for "documentation" of passage of the national examination. Evidence of passage may be delivered on-line in the future.

18 VAC 85-40-45. Educational requirements.

An amendment has been added to give the Board authority to accept equivalent education to that required for credentialing by the National Board on Respiratory Care (NBRC) if another equivalent, national credential became available.

18 VAC 85-40-50. Examination requirements.

An amendment would delete the requirement for "written evidence, verified by affidavit" to permit the Board to receive national examination scores on-line.

18 VAC 85-40-60. Renewal of license.

The Board adopted amendments to clarify that the license must attest on the renewal form that he has engaged in active practice as defined in section 10 and that he has met the continuing education requirements set forth in section 66. In adoption of final amendments, the Board has allowed a licensee to present other documented evidence acceptable to the Board indicating that he is prepared to resume practice in lieu of the 160 hours of active practice.

18 VAC 85-40-61. Inactive license.

An amendment for reactivation of an inactive license will require 10 hours of continuing education for each year in which the license has been inactive, not to exceed three years.

18 VAC 85-40-65. Reinstatement.

An amendment for reinstatement of a lapsed license to require 10 hours of continuing education for each year in which the license has been lapsed, not to exceed three years.

18 VAC 85-40-66. Continuing education requirements.

New regulations for continuing education will require an active licensee to complete 20 hours each biennium of continuing education in respiratory care offered by a sponsor or provider recognized by the AARC. The regulations provide for an exemption in the first renewal following initial licensure and empower the Board to grant exemptions for all or part of the requirement for circumstances beyond the control of the licensee. Licensees are also allowed to submit a written request for an extension of time for up to one year. Licensees must retain CE documentation for four years following renewal and are required to provide such documentation within 30 days of receiving notification of a CE audit. Failure to comply with CE requirements may subject the licensee to disciplinary action.

18 VAC 85-40-80. Fees.

Amendments place the fees under Part I, General Provisions for consistently with other regulations under the Board of Medicine and to state the current policy of the board, which is that all fees are nonrefundable unless otherwise specified.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The amendments will have no impact on the authority and rights of parents in the education, nurturing or supervision of their children. They may encourage self-pride for licensees who obtain additional training that they may not have otherwise pursued. The amendments should have no impact on the marital commitment. Disposable income of practitioners who are required to obtain the training will decrease slightly depending on the type of continuing competency activities selected.